

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 59th LEGISLATURE - REGULAR SESSION

JOINT APPROPRIATIONS SUBCOMMITTEE ON NATURAL RESOURCES AND COMMERCE

Call to Order: By **CHAIRMAN RICK RIPLEY**, on January 26, 2005 at
8:00 A.M., in Room 317-C Capitol.

ROLL CALL

Members Present:

Rep. Rick Ripley, Chairman (R)
Sen. Ken (Kim) Hansen, Vice Chairman (D)
Sen. Gregory D. Barkus (R)
Rep. Rosalie (Rosie) Buzzas (D)
Sen. Bob Hawks (D)
Rep. Walter McNutt (R)
Rep. John L. Musgrove (D)

Members Excused: None.

Members Absent: None.

Staff Present: Brit Nelson, Committee Secretary
Barbara Smith, Legislative Branch
Doug Schmitz, OBPP Representative

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted:

Executive Action: Department of Environmental Quality

**EXECUTIVE ACTION: DEPARTMENT OF NATURAL RESOURCES AND
CONSERVATION**

Barbara Smith opened the meeting with a discussion of the DNRC's **Decision Package(DP) 2414 -- St. Mary's Hydrologist**. This DP was presented on the last day of Executive Action for the Department of Natural Resources and Conservation. She expressed that the legislative Fiscal Division had concerns with the DPs. She suggested that they place DP 2414 and **DP 2327** together in a single DP contained in one portion of the Department since they both dealt with the St. Mary's Project. She reiterated that the project was very large and had many implications which would need people with the ability to work closely. The second issue she brought up was the actual amount of money that would be allocated for personal services. She mentioned that a hydrologist with DNRC was being paid \$8,000 less per year then the proposed amount for the St. Mary's hydrologist. The third issue she wanted to inform the committee about concerned HB 7. HB 7, Reclamation and Development Grant Program, requested a grant for St. Mary's for the amount of \$300,000. The committee had raised that amount to \$900,000 raising the issue of duplicate funding in the two DPs.

EXHIBIT(jnh20a01)

{Tape: 1; Side: A; Approx. Time Counter: 0 - 3.1}

Ray Beck, Administrator of the Conservation and Resources Development Division of the Department of Natural Resources and Conservation, addressed the issues Barb had put forth to the committee. He reaffirmed that the maximum grant given to the St. Mary's Project by HB 7 had been increased to \$900,000. He reported that the \$900,000 would be used for environmental studies, engineering studies, cultural resource studies, economic studies, and designs only. He noted that this money would be tying in with the \$10 million from the Governor's Office. Despite that limitation there was an additional item which they wanted funded with the grant: the assistance of logging operations. He proposed that they would need some financial assistance with contracted services.

{Tape: 1; Side: A; Approx. Time Counter: 3.1 - 7.2}

QUESTIONS FROM THE COMMITTEE AND THE ANSWERS

SEN. BARKUS requested that Mr. Beck address the issue of the hydrologist's salary. He was curious about the pay differences Barb noted.

Jack Stults, Administrator of the Water Resources Division of the Department of Natural Resources and Conservation, responded to SEN. BARKUS' question. He noted that they did not have any level seven hydrologist however they do have a level six hydrologist. The salary that the committee had for the DNRC hydrologist included both salary and benefits. Because of this fact and the changes brought about by Pay Plan 20, Mr. Stults felt that the comparative salary from DEQ for a level seven hydrologist was just salary and did not include benefits.

{Tape: 1; Side: A; Approx. Time Counter: 7.2 - 9.2}

Ms. Smith indicated that the salary for the DEQ hydrologist did include benefits.

Mr. Stults apologized and said he had no way of explaining the difference.

CHAIRMAN RIPLEY suggested that an option would be to leave the hydrologist and engineer DPs split and fund the hydrologist through DEQ.

REP. MUSGROVE supported the separation of the DPs. He noted that having the engineer in the Conservation and Resource Development Division and the hydrologist in the Water Resources Division would allow them to work together very effectively.

CHAIRMAN RIPLEY wondered what the concerns would be funding the hydrologist through DEQ rather than through DNRC.

Jack Stults insisted that the hydrologist needed to reside in DNRC. He pointed out that DEQ had a very small role in the project. He supported REP. MUSGROVE'S desire to keep the positions both within DNRC.

CHAIRMAN RIPLEY asserted that the problem he had was the funding.

Doug Schmitz remarked that the funding was still a concern from his office and he had not received final direction from the Budget Director as to how they wanted to approach this issue. He also wanted to run DP 2414 through the Budget Office. He noted that engineering positions in the Department of Transportation did not make nearly as much as the proposed amount. He commented that at the Budget Office did not have funding for this project.

REP. MUSGROVE wanted to know what the schedule for the next week and a half was.

CHAIRMAN RIPLEY informed the committee that they were ahead of schedule and he would not mind delaying for a while but he felt that they needed to move ahead with this section.

Ms. Smith reported that an option would be to look at the previously approved DPs and use DP 2414 as a replacement package or wait until the Resource Indemnity Trust Fund (RIT) issues have been resolved and they know how much money they will be able to use.

Doug Schmitz guessed that if the DPs went to Water Resources Division all the funding for the hydrologist position would be general fund and of the engineer stayed in the CARD Division it would all be RIT funds.

REP. BUZZAS wondered when Mr. Schmitz would have the information on RIT funding.

Mr. Schmitz responded that as soon as he was able to contact Hal Harper, the Budget Director, he would have an answer.

{Tape: 1; Side: A; Approx. Time Counter: 9.2 - 20.2}

CHAIRMAN RIPLEY voiced his discomfort delaying the DPs for much longer but indicated that they would delay and take action on January 29 with the DPs remaining separate.

REP. MUSGROVE asked Rich Moy to give an overview of the Boundary Waters Treaty and the Order of 1921.

HEARING ON THE BOUNDARY WATERS TREATY AND THE INTERNATIONAL JOINT COMMISSION ORDER OF 1921

Rich Moy, Bureau Chief of the Water Management Bureau of the Department of Natural Resources and Conservation, provided a handout to the committee members about the International Joint Commission for the Milk and St. Mary Rivers. He explained that the water rights issues have been an ongoing problem for the last 83 years. It is the only issue that has so divided Canada and the United States. He cited from the treaty noting the issues that were of contention between the two countries. He insisted that Montana was not receiving what it was entitled to from the treaty. He blamed this inconsistency on the administrative procedures. He asserted that a hydrologist would be absolutely critical to the process of changing the administrative procedures

and getting Montana its fair share of water. He declared that this was only a first step and that it would be a fight.

EXHIBIT(jnh20a02)

{Tape: 1; Side: A; Approx. Time Counter: 20.2 - 32.5}

SEN. BARKUS wanted to know what Montana was getting a percentage of.

Mr. Moy replied that Montana gets 40% of the total flow of the combined Milk and St. Mary's Rivers; yet, Montana is entitled to 50% based on the treaty.

SEN. BARKUS asked if Montana was entitled to the flows leaving the United States and entering Canada or the flows coming out of Canada.

Mr. Moy explained that Montana is entitled to the natural flow of the water that leaves the United States going into Canada from the St. Mary's and the amount of water that comes back into the United States in the Milk River.

{Tape: 1; Side: A; Approx. Time Counter: 32.5 - 34.1}

HEARING ON THE DEPARTMENT OF ENVIRONMENTAL QUALITY

Richard Opper, Director of the Montana Department of Environmental, remarked that the Department wanted to answer some questions from the 25th which they had not been able to answer.

Steve Welch addressed a question by **SEN. BARKUS** concerning the Major Facility Siting Act and why the DEQ was still monitoring some sites. He explained that the Water Quality Act explicitly excluded those projects from being included in the MFSA for groundwater permitting plants. The next question he addressed was **REP. MUSGROVE'S** question concerning taxes on the Sand and Gravel Industry. He informed the committee members that he had contacted the Department of Revenue who indicated that they and other groups pay a certain amount of the Resource Indemnity Trust.

Barbara Smith notified the committee that they had a handout concerning Total Maximum Daily Load (TMDL) full-time equivalents and their funding.

EXHIBIT(jnh20a03)

Art Compton, Administrator of the Planning, Prevention and Assistance Division of the Department of Environmental Quality, responded to a question by SEN. BARKUS from the previous day. SEN. BARKUS had wondered how much they had spent on TMDL's, funding for the FTE, and if the Department had projected what they would invest in the program if it extends out through the end of the development phases in 2012. The handout he had provided, which Barb had introduced, explained the answers to these questions.

{Tape: 1; Side: A; Approx. Time Counter: 34.1 - 47.3}

Terry Wadsworth, Supervisor of the Petroleum Tank Compensation Board of the Department of Environmental Quality, addressed a question asked by REP. MUSGROVE on the 25th. REP. MUSGROVE had asked regarding the releases that had occurred and what percentage of the owners/operators had insurance to cover the cost of the cleanup. Mr. Wadsworth examined 296 releases and discovered that of those he examined, 187 had insurance, resulting in a percentage of 63%.

{Tape: 1; Side: A; Approx. Time Counter: 47.3 - 50}

Gary Hamel, Budget Director of the Department of Environmental Quality, provided the committee with a list of vacant positions in the DEQ. He described the sheet indicating what each section meant.

EXHIBIT (jnh20a04)

{Tape: 1; Side: B; Approx. Time Counter: 0 - 5}

REP. BUZZAS wondered if they had trouble filling positions that were not full-time.

Mr. Hamel commented that they were trying to redefine part-time positions to attract full-time employees.

CHAIRMAN RIPLEY noted that the Environmental Science Specialist position had been vacant for 403 days and another position had been vacant for 565 days and then closed. He was curious about these and the reasoning behind them.

Mr. Hamel replied that the .25 position that had been vacant for 403 days had been the position he referred to when answering REP. BUZZAS. He informed the committee that they were going to be combining it with another partial position to make a full-time position. In the case of the 565 day vacancy, the regular

process requires that there be a time period after closure to allow for tardy applications. He insisted that they would be looking at the applicants soon.

CHAIRMAN RIPLEY inferred that the position would have been open many times before. He wondered if they had any applicants in the past.

Susan McEachern noted that the position in question had been transferred to the Planning Division in 2004. The closing date which Mr. Hamel had been referring to was the first closing date for the TMDL portion of the division.

Gary Hamel stated that the Department was looking for a mechanism to better utilize positions and to better retain employees. In order to do this they formed the committee. They are looking at non-union employees and better ways in which to utilize pay plan 20 to recruit and retain employees.

SEN. BARKUS remarked that he had a hard time understanding how a position that had stayed open for over a year was actually a necessary position.

Mr. Hamel indicated that in some cases, when a position is held open over a year, there are recruitment issues or the positions are tied to federal funding sources that weren't available for that year but they are anticipating the funding for the second year. He cited that it could also be difficult to find individuals with the right qualifications for the positions. He also stated that pay plan 20 was not able to keep up with the private sector which could cause problems with filling a position.

{Tape: 1; Side: B; Approx. Time Counter: 5 - 12.3}

REP. MUSGROVE requested that Mr. Hamel address the vacancies due to retirement.

Mr. Hamel reported that they had some anticipated retirement statistics but he was not aware of the positions specifically that were open because of retirement.

REP. MUSGROVE followed up asking how much of the openings were representative of vacancy savings requirements.

Mr. Hamel replied that the Department had to meet vacancy savings requirements and so had to hold open positions. If there is a critical position they usually fill it quickly and the more

specialized, harder to fill positions fill in the gaps for the vacancy savings.

REP. MUSGROVE expressed his dislike of vacancy savings as a budgeting tool.

Terry Wadsworth addressed the problems which the Petroleum Board faces with its budget. He explained that if someone does retire out of his Division and he has a fixed budget for that position he must use his budgeted amount for the benefit payouts and so the position must remain open to establish an adequate budget.

CHAIRMAN RIPLEY noted that there was a Decision Package in the Permit and Planning Division which would address retirement in that program. He urged the Division to take an active approach in addressing the vacant positions.

{Tape: 1; Side: B; Approx. Time Counter: 12.3 - 16.9}

Mr. Hamel declared that the positions were important and they were trying to fill them.

CHAIRMAN RIPLEY clarified that his point was the problem was ongoing and the committee was just now being formed. He hoped that they would be able to address the issues.

Proponents' Testimony:

Michelle Reinhart, Northern Plains Resource Council, came to support the DEQ's budget for continued USGS monitoring of the Tongue River.

Bruce Williams, Vice President of Operations for Fidelity Exploration and Production, also verbalized support for the monitoring of water quality on the Tongue River.

Sara Carlson, Montana Association of Conservation Districts, expressed concerns of the Conservation Districts about the implementation of TMDLs. They have been working with the Director to find a solution in house so she did not want to suggest any changes as of now however, there are concerns. She contended that the implementation should be left up to the Conservation Districts. She wanted to be clear that she was not speaking against anything but wanted to voice the concerns of the CDs.

EXECUTIVE ACTION ON THE DEPARTMENT OF ENVIRONMENTAL QUALITY:
PLANNING PREVENTION AND ASSISTANCE DIVISION

{Tape: 1; Side: B; Approx. Time Counter: 16.9 - 28.1}

CHAIRMAN RIPLEY initiated executive action with **DP 2001 -- Water Quality Planning Bureau Operations Adjustment.**

Barbara Smith notified the committee members that she had a spreadsheet of the total amount of the packages being considered.

EXHIBIT (jnh20a05)

CHAIRMAN RIPLEY asked if the delays in federal funding had become a problem and if they were expecting the delays to continue through the next biennium.

Art Compton stated that he did perceive the delays as a problem. He indicated that it made it very difficult to allocate the money or use it for the staff. He speculated that the problems would continue in the 319 Program, Non-point Source TMDL Program, the Wetlands Program, and in some of the energy programs. He claimed it would be a challenge that would have to be addressed when it occurred.

CHAIRMAN RIPLEY wondered how much later the funding was arriving that it had in the past.

Mr. Compton answered that it changed year to year. In many programs the money needs to be available by May or June. However, he could not provide an exact answer.

CHAIRMAN RIPLEY reiterated his question, asking how much later they were receiving the funds than they had in the past.

Susan McEachern elaborated in Mr. Compton's answer. She noted that the funding changed from grant to grant. She expressed that from the Department of Energy they were receiving grants up to six months later than they used to. Overall however, she claimed that the grants were three to six months late.

{Tape: 1; Side: B; Approx. Time Counter: 28.1 - 37.6}

SEN. BARKUS suggested that they would have a fairly good indication of the amount of federal funding they were going to receive because they had a good indication of how much the grants would be. He wondered if they couldn't be ready for the money by the time they received it.

Mr. Compton agreed with his assumption when it came to a few of the grants however, they have statutory constraints on actually issuing contracts until they had the signed documents from the DOE or EPA. He also recounted some areas in which they would not have a good idea about the amount of grants they would be receiving because they are competitive special project grants.

{Tape: 1; Side: B; Approx. Time Counter: 37.6 - 41.5}

Tom Livers added that late federal funding was an issue that they were experiencing throughout the Agency. He expressed that what the issue came down to was the State carrying the costs for the federal government.

Motion/Vote: REP. MUSGROVE moved that DP 2001 BE ADOPTED. Motion carried unanimously, 7-0.

CHAIRMAN RIPLEY indicated that the committee had to address the Present Law Adjustments and base budget.

Motion/Vote: SEN. BARKUS moved that PRESENT LAW ADJUSTMENTS AND THE BASE BUDGET BE ADOPTED. Motion carried unanimously by voice vote.

{Tape: 1; Side: B; Approx. Time Counter: 41.5 - 47}

Motion/Vote: SEN. BARKUS moved that DP 2002 -- Fiscal and Administrative Unit Operations Adjustments BE ADOPTED. Motion carried unanimously by voice vote.

Motion: SEN. HANSEN moved that DP 2003 -- Technical and Financial Assistance Bureau Operations Adjustment BE ADOPTED.

Discussion:

SEN. BARKUS asked about the \$42,000 in travel, supplies and communications.

Ms. Smith replied that there were some vacant positions that the Division was looking to restore in the base budget which necessitated the \$42,000 increase.

Ms. McEachrn supported Ms. Smith's assumption.

{Tape: 1; Side: B; Approx. Time Counter: 47 - 50.7}

Vote: Motion carried unanimously by voice vote.

Motion/Vote: REP. BUZZAS moved that DP 2004 -- Air Energy and Pollution Prevention Bureau Operations Adjustment BE ADOPTED. Motion carried unanimously by voice vote.

Motion: REP. MUSGROVE moved that DP 2007 -- Water Quality Monitoring TMDL Completion BE ADOPTED.

Discussion:

Ms. Smith reminded the members of the committee that there was a substitute DP 2007 because of the full-time equivalent movement. The package had been reduced to five FTE who would be permanent and moved to the base. She informed the committee that DP 2007 would have five FTE at a cost of \$1.8 million in 2006 and \$1.8 million in 2007 split between general funds and federal funds.

REP. BUZZAS asked what had been done with the four field staff.

CHAIRMAN RIPLEY answered that they had been moved into a new DP, DP 2020.

EXHIBIT(jnh20a06)

Vote: Motion carried unanimously by voice vote.

Motion/Vote: REP. BUZZAS moved that DP 2019 -- Database Maintenance Costs - OTO BE ADOPTED. Motion carried unanimously by voice vote.

Motion: REP. MUSGROVE moved that DP 2020 BE ADOPTED.

Discussion:

Ms. Smith referenced Exhibit (6).

REP. MUSGROVE wondered if it was a one-time-only appropriation and what temporary EE meant.

Ms. Smith explained that it was a one-time-only position because it was for temporary employees.

Vote: Motion carried unanimously by voice vote.

{Tape: 2; Side: A; Approx. Time Counter: 0 - 5.6}

Motion/Vote: SEN. BARKUS moved that DP 2021 -- Statewide FTE Reduction BE ADOPTED. Motion carried unanimously by voice vote.

Motion/Vote: REP. MCNUTT moved that DP 2022 -- Water Quality Monitoring TMDL Completion-OTO BE ADOPTED. Motion carried unanimously by voice vote.

Motion: SEN. HAWKS moved that DP 2012 -- BLM Funding for Water Quality Monitoring BE ADOPTED.

Discussion:

SEN. HAWKS inquired if the DP was to be a one-time-only appropriation.

Ms. Smith indicated that it was not currently designated as OTO.

Vote: Motion carried unanimously by voice vote.

{Tape: 2; Side: A; Approx. Time Counter: 5.6 - 8}

Motion/Vote: REP. MCNUTT moved that DP 2016 -- Wetlands Grants Authority BE ADOPTED. Motion carried unanimously by voice vote.

Motion/Vote: REP. MUSGROVE moved that the LANGUAGE APPROPRIATION BE ADOPTED. Motion carried unanimously by voice vote.

**EXECUTIVE ACTION ON THE DEPARTMENT ON ENVIRONMENTAL QUALITY:
CENTRAL MANAGEMENT DIVISION**

Motion: SEN. HAWKS moved that DP 1004 BE ADOPTED.

Discussion:

{Tape: 2; Side: A; Approx. Time Counter: 8 - 10.6}

SEN. HAWKS asserted that he had some questions about why the Environmental Information Systems(EIS) did not equal the fees paid for the process.

Tom Livers reported that it had only become an issue over the last biennium. Essentially the fees which the DEQ is allowed to collect under Montana Environmental Policy Act (MEPA) were set in the mid 1970's and have not been adjusted since. He stated that companies who have come for analyses under MEPA have been willing to pay more than the statutory minimum until recently. The last biennium was the first time a company had refused other than the statutory minimum and the DEQ had to subsidize the analysis. He noted that LC 1309 would address the issue.

Barbara Smith reiterated the issue she had brought up in the budget analysis. She wanted to note that there was no guarantee that the fees would be collected in a full and in a timely manner until the legislation passed.

REP. BUZZAS clarified that if the committee passed the DP it would be contingent on the passage of LC 1309.

Ms. Smith replied that a portion, \$500,000, of the package would be contingent on passage of LC 1309. However, unless the industry cooperated the DEQ would only be able to collect \$20,000 by statute.

Vote: Motion carried 6-1 by voice vote with SEN. BARKUS voting no.

{Tape: 2; Side: A; Approx. Time Counter: 10.6 - 15.9}

Motion/Vote: REP. BUZZAS moved that DP 1009 -- Non-Proprietary Central Management Operating Adjustments BE ADOPTED. Motion carried unanimously by voice vote.

{Tape: 2; Side: A; Approx. Time Counter: 15.9 - 16.8}

Motion/Vote: REP. MUSGROVE moved DP 1011 -- Board of Environmental Review Biennial Request. Motion carried unanimously by voice vote.

Motion: REP. MUSGROVE moved that DP 1008 -- Concentrated Animal Feed Operations Environmental Impact Statement-OTO BE ADOPTED.

Discussion:

SEN. HANSEN commented that the DEQ had addressed his concern and he appreciated them working on that problem.

Vote: Motion carried unanimously by voice vote.

Motion: SEN. HAWKS moved that NP 1012 -- Gallatin River EIS BE ADOPTED.

EXHIBIT(jnh20a07)

Discussion:

Tom Livers related that SEN. WHEAT had a bill making the Gallatin River an Outstanding Resource Water (ORW) EIS. He explained that the legislature had made a designation concerning Resource Waters a few bienniums ago and the Board of Environmental Review had received a petition for the Gallatin three or four years ago. The BOE did not get funding to conduct an EIS on the Gallatin at that time. He indicated that they were working under the assumption that it would cost them around \$250,000 to conduct the EIS. So far they have not been able to find funding for the project as a total so are looking for money to get started. He reiterated that there was a directive for the Board to conduct the EIS but no funding for it.

CHAIRMAN RIPLEY asked Mr. Livers where the funding would come from.

Ms. Smith replied that the funding option the committee had was the excess corpus of the Revolving Indemnity Trust which would be \$254,000. Because the corpus of the fund is above \$100 million the committee would be able to appropriate it or leave it in the trust.

REP. BUZZAS questioned how far over the RIT cap the funds were, asking if they were exactly \$250,000 over.

Ms. Smith reported that it was \$254,295 over from the Ground Water Assessment Account which was over the statutory limit and thus had to have the money sent back to the corpus.

REP. BUZZAS asked if the passage of this DP would in any way endanger SEN. WHEAT'S bill.

SEN. HAWKS replied that it was his understanding that the funding source was essential to the implementation of the EIS.

Ms. Smith explained that the draft of the bill did not have an appropriation in it. In order to appropriate money to DEQ the DP had to come before the committee. The funding will be contingent on the passage of the bill.

SEN. HAWKS asserted that there was heavy development on the Gallatin and this EIS would be another way of assisting in the maintenance of the integrity of the river.

Barbara Smith clarified that it was written as OTO restricted. She mentioned that the bill would direct the Department to

complete the EIS within one year of the passage of that legislation.

SEN. BARKUS wondered how many waters in the state would fall into the Source Water area.

{Tape: 2; Side: A; Approx. Time Counter: 16.8 - 29.9}

Art Compton answered that the Gallatin was the only one. All other Outstanding Source Waters existed, by federal law, in the National Parks and Wilderness Areas. He stated that this would be the first designation of ORW outside of a National Park or Wilderness. He also mentioned that it was not the entire river, it would start in Big Sky and would end around Indian Creek.

REP. MUSGROVE inquired, "Who makes the designations, the DEQ or some other Agency?"

Mr. Compton remarked that the legislature made the designation. He asserted that all the Board could do would accept or reject a petition under strict statutory requirements.

REP. MUSGROVE requested to know when the legislature had made the designation.

Mr. Compton replied that it was in 2002 that the legislature approved the designation after the BOE had accepted a private petition, from American Wildlands, for the ORW designation.

SEN. BARKUS wanted to know what the restrictions of an ORW would be.

Mr. Compton related that the only difference with an ORW is that the river could not experience significant degradation. He noted that Montana's Water Quality Laws label discharges as significant or non-significant. If they are found to be non-significant a discharge permit could be issued if it is beyond the significance threshold the applicant must petition the State and receive authorization to discharge. He reported that there has been nothing approved over the five years during which the laws have been in effect. He indicated that they would be dealing almost exclusively with socio-economic issues such as development at Big Sky.

SEN. BARKUS inferred that an ORW put major restrictions on development.

{Tape: 2; Side: A; Approx. Time Counter: 29.9 - 41.7}

Mr. Compton agreed if it is considered that never having the ability to cause significant degradation would occur with the ORW designation being absent. However, he felt that there would be minimal impact on development because it has been extremely difficult to get permits on the Gallatin if significant degradation was suspected.

{Tape: 2; Side: A; Approx. Time Counter: 41.7 - 45}

Vote: Motion carried 4-3 by voice vote with **SEN. BARKUS, REP. MCNUTT,** and **REP. RIPLEY** voting no.

Barbara Smith addressed the issue of proprietary rates. She explained that the proprietary rate before the committee was a capped rate, a percentage rate applied against personal services which would then go through the Central Management Division to fund some of their functions. She informed the committee that in fiscal year 2004 they had \$2 million in revenue based on the indirect rate. She explained that the proprietary rate would increase it to \$175,599 under two conditions: 1) if personal services remained flat, and 2) if the Department negotiates the same rate with Environmental Protection Agency. She stated that the committee was essentially setting a cap allowing the DEQ to negotiate up to the cap. She noted that there would be large adjustments for indirect rates from the base year indirect rate which was approximately 22.6% up to the 25% level. She elaborated that this did not mean that the actual rate would be 25%.

{Tape: 2; Side: A; Approx. Time Counter: 45 - 50.1}

SEN. BARKUS noted that it was a 10% increase which was significantly greater. He wondered if there was a reason for the increase.

Ms. Smith answered that part of the reason was that as positions are added or increase salaries the indirect rate would also collect more cash. She reiterated that the DEQ would be allowed to negotiate only up to that level, she stated that the committee could make a motion to change the percentage level to which they could negotiate.

CHAIRMAN RIPLEY asked for an average amount. He wanted to know if the 25% was high, average or low.

Ms. Smith expressed that it was a difficult question to answer because there were other agencies which used this methodology. She deferred the question to Gary Hamel.

Gary Hamel replied that the reason that they were requesting the 25% was because the proprietary fund is an internal service fund which provides for 55.5 full-time equivalents in the Central Management Program. He indicated that state law requires the DEQ to collect indirect rates to the fullest extent possible. He reported that they were in compliance with that particular statute. What they do is calculate the growth figure which includes personal services costs, temporary services and work study contracts. He mentioned that historically there was a legislative cap and the EPA negotiated rate. He remarked that the difference that they were asking for was a cap of 25% because they were anticipating a negotiation with the EPA for approximately 24%. He gave a brief rundown of the legislative cap and the corresponding EPA negotiations.

{Tape: 2; Side: B; Approx. Time Counter: 0 - 7.4}

SEN. BARKUS wanted to know what would happen if the committee approved a 24% cap.

Mr. Hamel remarked that if the cap was approved at 24% there could occur a situation where the DEQ was out of compliance with state law if they were not able to fully maximize the collection of the funds. Another situation he mentioned was the cutting back the 55.5 FTE.

Ms. Smith commented that the average negotiated rate from 2002 was 22.44% with about 17% of the employees funded with the money.

Mr. Hamel stated that the DEQ only utilized the proprietary fund for the Centralized Services. He gave examples of Fish, Wildlife and Parks and the Department of Natural Resources and Conservation and their funding sources comparing their ability to fund their Centralized Services compared to DEQ's ability. He noted that there was an increase in the EPA's negotiated rate.

CHAIRMAN RIPLEY commented that the Department was good at remaining below the set cap.

Mr. Hamel agreed with this comment and expressed that it was one of the DEQ's goals to negotiate with the EPA and stay within the state law. He attested that having the cap set at a slightly higher rate allowed the DEQ enough flexibility to handle the negotiations with the EPA.

Motion: **SEN. BARKUS** moved that the PROPRIETARY RATE BE SET AT 24%.

{Tape: 2; Side: B; Approx. Time Counter: 7.4 - 11.9}

Discussion:

REP. BUZZAS spoke against SEN. BARKUS' motion. She indicated that she felt the Department should have a range for negotiations.

CHAIRMAN RIPLEY agreed with SEN. BARKUS that 24% would be a fair percentage at which to set the cap.

SEN. HAWKS asked if the 24% versus the 25% offered the DEQ a negative advantage.

Mr. Hamel replied that it did not; however, their biggest concern was the anticipation of negotiating a rate of approximately 24%. He asserted that the EPA would not allow the Department to go over that amount and if their anticipated expenditures change their ability to pay for those changes would be limited or they would be out of compliance with State law.

REP. MUSGROVE suggested a compromise of 24.5%.

SEN. BARKUS responded that he felt the 10% increase, when they had been able to maintain the rate below the cap, would be unnecessary.

REP. MUSGROVE asserted that he felt it would help them negotiate.

{Tape: 2; Side: B; Approx. Time Counter: 11.9 - 16.8}

Tom Livers remarked that he feared they would be out of compliance if they were kept at a cap of 24%. He claimed that the Department was careful with the account and did not add people thoughtlessly.

Vote: Motion carried 4-3 by voice vote with REP. BUZZAS, SEN. HAWKS, and REP. MUSGROVE voting no.

EXECUTIVE ACTION ON THE DEPARTMENT OF ENVIRONMENTAL QUALITY:
ENFORCEMENT DIVISION

{Tape: 2; Side: B; Approx. Time Counter: 16.8 - 21.7}

Motion/Vote: SEN. BARKUS moved that DP 3001-- Enforcement Operations Adjustments BE ADOPTED. Motion carried unanimously by voice vote.

Motion: REP. MCNUTT moved that DP 3002 -- Enforcement Vehicle Lease BE ADOPTED.

Discussion:

SEN. BARKUS why the Department leased vehicles when they put a lot of miles on the vehicles.

Tom Livers replied that the decision to lease vehicles was made centrally in state government. The idea behind it is that an individual agency might be able to do better with negotiation of a vehicle but statewide efficiency would be gained from all agencies leasing their vehicles.

Doug Schmitz declared that it has been policy and the Governor's Office has encouraged agencies to utilize the services of the motor pool on a statewide basis. He mentioned an audit before 1995 where the safety of the vehicles came into question. He was unsure of the number of vehicles in the motor pool but indicated that most agencies had made the transition in the entirety. The prices have decreased this biennium and it makes it easier to maintain vehicles through centralized fleet management.

Vote: Motion carried unanimously by voice vote.

{Tape: 2; Side: B; Approx. Time Counter: 21.7 - 30.4}

REP. BUZZAS and SEN. HAWKS both left the room at 10:45 A.M.

EXECUTIVE ACTION ON THE DEPARTMENT OF ENVIRONMENTAL QUALITY:
REMEDIATION DIVISION

Motion: REP. MCNUTT moved that DP 4001 -- Hazardous Waste Cleanup Operations Adjustment BE ADOPTED.

Discussion:

Barb Smith reminded the committee that there was an adjustment for four vacant FTE in DP 4001.

SEN. BARKUS asked Ms. Smith to explain why they were adjusting traveling and operating expenses for four vacant FTE.

Ms. Smith replied that the four positions were vacant in the base year and since the Department expects to fill the positions this biennium they were requesting funding for the associated costs.

Vote: Motion carried 6-0 by voice vote, with SEN. HANSEN voting by proxy for SEN. HAWKS.

Motion/Vote: REP. MUSGROVE moved DP 4002 -- Mine Waste Cleanup Operations Adjustment . Motion carried 6-0 by voice vote, with SEN. HANSEN voting by proxy for SEN. HAWKS.

Motion/Vote: SEN. BARKUS moved that DP 4003 -- Fiscal and Administrative Operations Adjustment BE ADOPTED. Motion carried 6-0 by voice vote, with SEN. HANSEN voting by proxy for SEN. HAWKS.

Motion/Vote: REP. MCNUTT moved that FP 4004 -- Technical Services Operations Adjustment BE ADOPTED. Motion carried unanimously by voice vote, with SEN. HANSEN voting by proxy for SEN. HAWKS and REP. MUSGROVE voting by proxy for REP. BUZZAS.

SEN. HAWKS returned at 11:00 A.M.

{Tape: 2; Side: B; Approx. Time Counter: 30.4 - 40.8}

Motion/Vote: SEN. BARKUS moved that DP 4006 -- Hazardous Waste Cleanup EQPF Biennial Authority BE ADOPTED. Motion carried unanimously by voice vote, with REP. MUSGROVE voting by proxy for REP. BUZZAS.

Motion: SEN. HANSEN moved that DP 4008 -- Mine Waste and Abandoned Mine Land Authority BE ADOPTED.

Discussion:

CHAIRMAN RIPLEY reported that the Department had not completed planning and review work as rapidly as they initially planned, he wanted to know what the hold up had been.

Sandi Olsen, Administrator of the Remediation Division of the DEQ, explained that the negotiations with some of their cooperative projects have delayed the implementation. She noted that the implementation costs were not reflected in the base but will be needed in the next biennium.

CHAIRMAN RIPLEY followed up asking when the anticipated completion was.

Ms. Olsen replied that the projects should peak next biennium.

Vote: Motion carried unanimously by voice vote, with REP. MUSGROVE voting by proxy for REP. BUZZAS.

{Tape: 2; Side: B; Approx. Time Counter: 40.8 - 47.6}

Motion: REP. MCNUTT moved that DP 4009 -- Lockwood Biennial Authority Base BE ADOPTED.

Discussion:

SEN. BARKUS wondered why the Division needed \$400,000 to continue monitoring when all of the equipment was already in place.

Ms. Olsen reported that the money was not completely for monitoring. She explained that the money would also allow the Department to continue interim readings and administering the federal site. What they will need to do is contract out services for the cleanup.

SEN. BARKUS followed up asking how large the project was.

Ms. Olsen responded that the project contained two different sources of solvent contamination to the groundwater.

{Tape: 3; Side: A; Approx. Time Counter: 0 - 0.6}

SEN. BARKUS wondered what the sources of the solvents were.

Ms. Olsen expressed that there were multiple sources over the years. She mentioned that currently one of the facilities was a truck washing site. The problem she indicated was the fact that the groundwater is so close to the surface at the Lockwood site.

SEN. BARKUS inquired if the facilities were still operating.

Ms. Olsen responded that they were still operating.

SEN. BARKUS asked if they were continuing to discharge solvents.

Ms. Olsen replied that discharges were under control due to the Hazardous Operating Permitting Program but that there is a reservoir of solvents trapped under the facilities that continues to seep into the groundwater. She noted that at Lockwood there had been contamination of the soil which released vapors into the homes of nearby residents as well as into the water system. The EPA had built a public water supply to assure access to clean water however, the DEQ is responsible for cleaning up the contaminants.

{Tape: 3; Side: A; Approx. Time Counter: 0.6 - 3.6}

REP. MCNUTT enquired of Barb if DP 4009 was a biennial appropriation or if they were allocating \$400,000 per year of the biennium.

Ms. Smith informed REP. MCNUTT that the committee could line item the \$400,000.

CHAIRMAN RIPLEY wondered when the site was discovered and how much money has been spent on monitoring the site.

Ms. Olsen remarked that the site was first identified as a petroleum release site in the late 1980's and it was only after that when they discovered the other solvents.

CHAIRMAN RIPLEY inferred that part of the problem has been solved.

Ms. Olsen explained that the petroleum problem had been solved but that they were still working on the solvent groundwater contamination problem.

Ms. Smith clarified that all of the money was slated for consult and professional services.

Vote: Motion carried unanimously by voice vote, with REP. MUSGROVE voting for REP. BUZZAS.

Motion: REP. MCNUTT moved that DP 4010 -- Orphan Share Biennial Authority Operations Adjustment BE ADOPTED as OTO BIENNIAL.

Discussion:

Barbara Smith suggested that DP 4010 be restricted to one-time-only.

Vote: Motion carried unanimously by voice vote, with REP. MUSGROVE voting by proxy for REP. BUZZAS.

{Tape: 3; Side: A; Approx. Time Counter: 3.6 - 8.2}

Motion/Vote: REP. MUSGROVE moved that DP 4011 -- Ustfields OTO BE ADOPTED. Motion carried 6-1 by voice vote with REP. RIPLEY voting no, with REP. MUSGROVE voting by proxy for REP. BUZZAS.

Motion: REP. MCNUTT moved that DP 4005 -- Brownsfields Grant Authority BE ADOPTED.

Discussion:

SEN. BARKUS inquired if the Brownsfields Grant Authority applied to Kalispell.

Ms. Olsen replied that the Authority was used for outreach and Targeted Brownsfields Assessments, functions of the grant were the Division looks at potentially contaminated sites. She indicated that at this point there was no specific cleanup money or restrictions in the grant.

Ms. Smith addressed the issue next. She mentioned that of the \$950,000, \$890,000 would go to contracted services including contracts with non-profits for \$100,000. She reported that \$38,000 a year would go towards travel costs and the rest would be general operating costs.

Mr. Schmitz added that the DP was a budget amendment in the interim that the Department was requesting to turn into an ongoing source of funding.

Ms. Olsen supported Mr. Schmitz assumption noting that the grant process with the EPA was just getting started and they only received their first grant this biennium. They anticipate the grant reoccurring regularly from this point out.

{Tape: 3; Side: A; Approx. Time Counter: 8.2 - 13.7}

Vote: Motion carried unanimously by voice vote, with REP. MUSGROVE voting by proxy for REP. BUZZAS.

Motion/Vote: SEN. BARKUS moved that DP 4007 -- Lust Cost Recovery Biennial Authority BE ADOPTED. Motion carried unanimously by voice vote, with REP. MUSGROVE voting by proxy for REP. BUZZAS.

{Tape: 3; Side: A; Approx. Time Counter: 13.7 - 14.9}

Motion: REP. MCNUTT moved that DP 4012 -- Libby Asbestos Troy Biennium Authority BE ADOPTED.

Discussion:

CHAIRMAN RIPLEY wondered if there was any overlapping with DP 4013 -- CERCLA Bond Sales.

Ms. Olsen responded that there was no direct overlap of expenditures although there was some overlap of function. She explained that the overall Libby Asbestos site, which includes the contamination of Troy, was the responsibility of the Environmental Protection Agency and the Department because the responsible parties were bankrupt. At this point the amount of estimated cleanup the Department will be responsible for matching would be about \$80 million. In order to provide the required 10% match the Department will have to sell bonds and then issue bond money. The specific project in Troy will be funded by the EPA through its lead work.

Vote: Motion carried unanimously by voice vote, with REP. MUSGROVE voting by proxy for REP. BUZZAS.

Motion/Vote: SEN. HAWKS moved that DP 4013 -- CERCLA Bond Sales BE ADOPTED. Motion carried unanimously by voice vote, with REP. MUSGROVE voting by proxy for REP. BUZZAS.

{Tape: 3; Side: A; Approx. Time Counter: 14.9 - 19.9}

Barbara Smith addressed the handout she had provided to the committee which described New Proposal 4014 -- Hazardous Waste Study. She noted that it had been previously discussed in the committee. She also informed the committee that it was for \$2 million OTO, biennial, and restricted for the study of the three sites in Kalispell. She reported that SB 143 would have to be coordinated with since the bill provided the same amount of money for the same activity out of the Orphan Share. She believed that if NP 4014 passed the General Fund would be used and the appropriations portion of SB 143 would be amended out.

EXHIBIT(jnh20a08)

SEN. BARKUS asked if it would still be an option to use the Orphan Share as funding for the project if NP 4014 failed.

Ms. Smith affirmed this assumption.

SEN. BARKUS stated that he was going to vote against the proposal but would like it if someone from the Department would present their side of the issue again.

Sandi Olsen remarked that the Reliance Refinery Site had been a site which the State had been a partial owner of since the 1930's. Over the years the State had leased the sites for a number of activities which ended up releasing contaminants into the soil and groundwater. There is also contamination from the Kalispell Pullman Timber Site. Historically each party has addressed its own piece of the property. Under Superfund guidelines the unowned parts have to be studied as well. Their goal is to coordinate all parties to come up with a cost effective method of cleanup. There has been problems arriving at the goal and the Department felt that it was time the State took leadership. Their hope is to take the data that has already been collected and investigate those areas that haven't been in order to identify specific alternatives for cleanup. They would then be able to review the alternatives and come up with a final review action plan which they could take to all of the parties involved and get them to take their fair share of the cleanup. The DP would provide the spending authority and funding source for the project where as SB 143 would not be able to provide spending authority.

Ms, Smith interjected that she wanted to make a clarification. She noted that the land was state owned but it was not School Trust Land even though it was managed by the Trust Fund Division. She explained that it was Sovereign State Land and any money made off of it would go into the General Fund.

REP. MUSGROVE wanted to find out what the liability exposure was for private ownership within that area.

Ms. Olsen declared that there was a number of private parties involved with the State for responsibility. One of the major private parties, Burlington Northern, was the source of one of the contamination sites. Another potentially involved party is Kalispell Pole and Timber and although they have dissolved as a business their insurance policy would still be effective. The last private party she mentioned was Swank Construction which had bought a contaminated site and did not cleanup even after noting contamination. The bulk of the contamination occurred prior to Shwank's purchase of the land so in all probability their responsibility would be relatively minimal.

CHAIRMAN RIPLEY remembered that the Department of Natural Resources and Conservation had received a grant in 1997 for the cleanup of the site which DEQ could provide the expertise and in kind contribution to take care of the site. He was curious if this had been done.

Ms. Olsen explained that the grant was in part predicated on the theory that DNRC would cleanup only the portion of the land which they owned. At the time the DEQ had tried to help out the DNRC by facilitating funds from the EQPF Fund. She informed the committee that the process had not worked out and as a result DNRC had not moved forward to cleanup and the money had been reverted.

SEN. BARKUS stated that the situation needed State leadership. He wanted to comment that the leadership role had also taken the shape of a lawsuit. He was concerned with this discrepancy. He mentioned a study done in 2002 which he suggested the State was ignoring the results. He noted that there had not been any reports of illnesses and the refinery had not been operating for 30 years. He felt that \$2 million seemed like a lot of money to fund a study when it had already been studied. He added that if it was approved he would urge strong restrictions on reporting, accountability, communication with the property owners, and assurances to the property owners because the people involved felt that in 1985 they had dealt with the EPA under the assumptions that everything would be taken care of.

{Tape: 3; Side: A; Approx. Time Counter: 19.9 - 43.7}

SEN. HAWKS asked SEN. BARKUS how he proposed to bring this issue to resolution.

SEN. HAWKS responded that the Department had supposedly been working on the problem by billing the private parties. He pointed out that there had to be something being done because these individuals have been billed substantially. He thought there needed to be resolution but he could not agree with the line item appropriation of \$2 million would help the situation. He expressed that he did not see a plan to bring resolution to the site.

SEN. HAWKS questioned if the report done in 2002 had been done by a private party.

SEN BARKUS informed the committee that it had been done by Land and Water Consulting for DNRC's Trust Land Division.

{Tape: 3; Side: A; Approx. Time Counter: 43.7 - 48.3}

CHAIRMAN RIPLEY expressed his concern that the \$2 million will be spent only on a study and there will be no movement towards a solution. He indicated that for the amount of money he would like to see a more definite plan laid out.

REP. MUSGROVE asked who carried SB 143.

Ms. Smith replied that it was being carried by SEN. LIABLE. She also noted that there was an allowance in the bill to transferring between the Orphan Share and the EQPF funds.

Sandi Olsen offered to meet with the members to walk through the process of how they investigate sites and assess the risk of contamination and develop feasibility studies. She also expressed a willingness to report back in whatever fashion the committee would prefer.

EXECUTIVE ACTION ON THE DEPARTMENT OF ENVIRONMENTAL QUALITY:
PETROLEUM TANK RELEASE BOARD

Motion/Vote: REP. MUSGROVE moved that DP 9001 -- Petro Board Operating Adjustments BE ADOPTED. Motion carried 6-1 by voice vote with REP. RIPLEY voting no and REP. MUSGROVE voting by proxy for REP. BUZZAS.

{Tape: 3; Side: B; Approx. Time Counter: 0 - 4.7}

Motion/Vote: SEN. BARKUS moved that LANGUAGE PROPOSAL BE ADOPTED. Motion carried unanimously by voice vote with REP. MUSGROVE voting by proxy for REP. BUZZAS.

ADJOURNMENT

Adjournment: 11:20 A.M.

REP. RICK RIPLEY, Chairman

BRITT NELSON, Secretary

RR/bn

Additional Exhibits:

EXHIBIT ([jnh20aad0.PDF](#))